

REMARKS

Claims 1, 15 and 20 have been amended. Claims 36-38 have been canceled and their limitations added to claims 1, 15, and 20, respectively. Claims 1-21 and 32-35 are pending in the application. Favorable reconsideration and allowance of this application is respectfully requested in light of the foregoing amendments and the remarks that follow.

1. Claim Rejections Based on the Prior Art

a. Recapitulation of the Invention¹

The invention relates to a composite bag such as a so-called “half and half” bag having a first side wall formed at least in part from a synthetic resin mesh material and a second side formed from a synthetic resin film material. A reinforcing strip extends horizontally along the upper end portion of the mesh side wall of the bag. The reinforcing strip overlaps the upper edge of the first side wall such that it is joined to the first side wall through a horizontal seam positioned well beneath the top edge of the reinforcing strip to form an extension that protrudes well above (e.g., 1/2 inch to 1-1/2 inches or even considerably more, such as several inches or more) the upper edge of the mesh side wall. In order to strengthen the seam at the sides of the bag, the side edges of the reinforcing strip are joined to the second, film side wall along at least most of the vertical extent of the extension. This film-to-film bond is considerably stronger than

¹ This Section 3a is intended to provide the Examiner with some background information on the state of the art and applicant's contribution to it. It is *not* intended to distinguish specific claims from the prior art. That task is performed in Sections 3b and 3c below.

a bond through an intermediate mesh layer, as occurs along the remainder of the side seams of the bag. In addition, the relatively long extension provides an improved contact point for suction cups or other equipment used on automated bag filling equipment to open a bag during a bag filling process.

b. Rejection of Claims for Anticipation

The rejection of claims 1 – 4 and 8 under 35 U.S.C. §102(e) as being anticipated by Fox et al. (U.S. Patent No. 6,625,570) is respectfully traversed. Fox does not disclose each and every element of claims 1 – 4 and 9 and therefore can not be said to anticipate those claims.

Fox is concerned not with reinforcing a composite bag but with providing a drawstring for such a bag. Hence, the base bag includes mesh and film sidewalls 10 and 12 and a reinforcing strip 70 that does *not* extend above the tope of the mesh sidewall 10 (see Fig. 5). To this bag fox adds draw sleeves F and S.

The Examiner contends that the sidewall 60 of the draw string sleeve F corresponds to the claimed reinforcing strip. However, component 60 it clearly is *not* a reinforcing strip within any acceptable sense of that term. In addition, being folded over itself to present a hollow interior for receiving the drawstring 66, it *certainly* is not formed from a single, unfolded strip as material as claimed.

For at least this reason, the Fox reference does not disclose each element of claim 1 and cannot be considered anticipatory. Likewise, claims 2 – 4 and 8, which are dependent on claim 1, are not anticipated by Fox.

c. Rejection of Claims for Obviousness

i. *Claims 5 – 7 and 11 – 14 over Fox*

The Examiner has rejected claims 5 – 7 and 11 – 14 under 35 U.S.C. § 103 as obvious over the Fox reference. The Examiner has categorized the content of those claims, including dimensions of the seams with respect to the extension, the length of the extension, and the resulting seam strength, as a matter of design choice. Assuming without admitting that the Examiner is correct, each of the claims is nonetheless directly dependent on claim 1, which is not anticipated by the Fox reference as discussed above. Therefore the addition of “obvious design choices” can not invalidate the claims under § 103.

ii. *Claims 15, 16, 18, and 19 over Fox*

The Examiner states that “Fox teaches the claimed bag except is silent regarding specific dimensions for the height of the seams and overlap extension and the seam strength.” However, Fox does *not* teach the bag of claim 15. As discussed with respect to claim 1, Fox fails to disclose a reinforcing strip as claimed. Claim 15 requires an extension and direct fusion of the extension to the film wall. It also requires that the reinforcing strip be formed of a single unfolded strip as claimed. Without disclosing those elements, Fox combined with alleged design choice cannot be used to reject claim 15 or dependent claims 16, 18, and 19.

iii. *Claims 1 – 4, 20, and 32 over Nagel in view of Cammack*

The Examiner has rejected claims 1 – 4, 20, and 32, claiming that Nagel discloses a bag having a mesh side and a solid side, while Cammack discloses a mesh side and a reinforcing strip, applying the reinforcing strip to the mesh side, and directly bonding the reinforcing strip to the second, resin wall of the bag. Again, neither reference includes the extension that is clearly claimed in claims 1 and 20.

First, contrary to the Examiner's argument, it would *not* have been obvious to replace the rigid material of Nagel's backing member 11 with a synthetic resin film material. Nagel's container is intended to act as a container for a single article, such as a potato or an onion. Nagel specifies that it is important to secure the article in that container so that the article cannot shift about during handling. See, e.g., Col. 1, lines 33-38. In order to meet this requirement, the backing member 11 must be sufficiently rigid to maintain a substantial flat surface in the finished package irrespective of the pulling forces exerted on its sides by the netting member 12. A specific paperboard is identified as meeting this requirement. Col. 2, lines 51-63. There is no indication in the prior art that a synthetic resin film material is sufficiently rigid to meet this requirement. Hence, Nagel teaches directly *away* from the proposed modification.

In addition, Cammack does not disclose or suggest the combination of a first sidewall with a reinforcing strip and a second, film sidewall. Instead, both sidewalls of Cammack have a lower mesh portion and an upper film portion. Hence, both sidewalls are in this respect analogous to the claimed first sidewall. If one of ordinary skill in the art were to carry forward

any teachings regarding the relationship between the first and second sidewalls into Nagel, routiner would have also formed both sidewalls of Nagel from a lower mesh portion and an upper film portion --- in contravention to the claimed invention. To do otherwise would be to pick and choose amongst the teachings of the prior art, using the applicant's own disclosure as a template to latch on to those teachings that support the Examiner's position while ignoring those that do not. The Federal Circuit has held that a rejection based on obviousness cannot be predicated upon such an approach:

It is impermissible within the framework of section 103 to pick and chose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

In re Hedges, 228 USPQ 685, 687 (Fed. Cir. 1986), citing *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965); see also MPEP §2143.01.

In addition, the purported reinforcing strip the Examiner discusses with respect to Cammack is actually an adhesive strip 42. The bottom side and sides of the produce bag 10 are sewn together to create the bottom part 20 of the bag structure, completely comprised of mesh. The top portion 30 is then added to the bag 10. The bottom portion 20 and top portion 30 are connected by adhesive strips 42. See col. 5, lines 3 – 17. Referring to Fig. 6 of the Cammack disclosure, it can be seen that strip 42 does not extend beyond walls 21, such that an extension portion is formed and direct attachment between strip 42 and upper surface 34 can be achieved. Rather, referring to Fig. 5, it can be seen that adhesive strip 42 is attached to wall surface 34 only

through mesh wall 21. While the holes in mesh wall 21 allow for contact between adhesive 43 and surface 34, it cannot be said that adhesive strip 42 extends beyond the upper edge of wall 21 to form a direct bond with surface 34.

The Examiner argued in the “Response to Arguments” section of the final rejection that the claims do not specify that no other layers be disposed between the reinforcing strip and the film side of the bag. Applicant disagrees because the term “direct” necessarily negates the presence of any intermediate layers. Nevertheless, in order to forestall any further controversy, application has amended each of the independent claims to specify that the claimed layers be bonded to one another “without any other layers located therebetween.” That indisputably is *not* the case in Cammack.

In addition, Cammack’s “extension” 71 is not bonded directly to the first, mesh sidewall as claimed. It is instead held in place by the adhesive material on the inside 43 of the strip 40 as seen in Figure 3. No bonding whatsoever takes place between the strip 71 and the mesh material.

Hence, neither Nagel nor Cammack discloses an extension of a reinforcing strip beyond the upper edge of the mesh wall and configured as claimed in claims 1 and 20. Therefore the references cannot be used to invalidate the claims, either alone or in combination. Likewise for claims 2 – 4 and 32, each of which is dependent on claim 1.

iv. Claims 5 – 7 and 11 – 14 over Nagel in view of Cammack

Each of claims 5 – 7 and 11 – 14 is dependent on claim 1. As discussed above, claim 1 is not obvious in light of Nagel in view of Cammack, therefore none of claims 5 – 7 and 11 – 14 can be considered obvious due to those references.

v. Claims 8 – 10 and 33 over Nagel in view of Cammack and Sorenson

Each of claims 8 – 10 and 33 is dependent, either directly or indirectly, on claim 1. Claim 1 is not obvious in light of Nagel and Cammack, as discussed above, and Sorenson does nothing to make up for the deficits of Nagel and Cammack. Sorenson discloses wicket openings in a bag, but none of the references discloses an extension, nor do they disclose direct attachment of such an extension to a film side of a bag without an intervening layer of mesh, both of which are required by claim 1. Therefore

vi. Claims 15, 16, 18, 19, and 34 over Nagel in view of Cammack

The same response given above in sections iii. and iv. applies to the Examiner's rejection of these claims. Claim 15, upon which all the other claims are dependent, clearly requires elements that are not disclosed in Nagel or Cammack, namely, an extension and direct bonding. Therefore, none of claims 15, 16, 18, 19, and 34 can be considered invalid in view of those references.

vii. *Claims 17 and 35 over Nagel in view of Cammack and Sorenson*

Claims 17 and 35 are dependent on claim 15, and claim 15, as discussed immediately above, is not invalidated by the combination of Nagel and Cammack. The addition of Sorenson does nothing to make up for the deficits of those references, and as a result, neither claims 17 nor 35 can be considered invalid under 35 U.S.C. § 103.

4. Conclusion

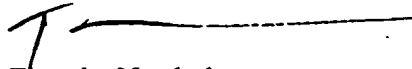
It is submitted that claims 1-21 and 32-35 are in compliance with 35 U.S.C. §§ 102 and 103 and each define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

Enclosed is a check for \$905 for the government filing fee by a *small* entity for 1) a 3-month extension of time, which applicant hereby requests, and 2) Request for Continued Examination. No additional fee is believed to be payable with this communication. Nevertheless, should the Examiner consider any other fees to be payable in conjunction with this or any future communication, the Director is authorized to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

Response to Office Action dated April 6, 2005
U.S. Serial No. 09/835,933 – Hefner
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The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,



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